From: Fred Butzen
To: Microsoft ATR
Date: 12/28/01 10:00am
Subject: Microsoft Settlement

Dear Sir or Madam,

The following gives my comment on the proposed settlement with Microsoft
corporation. My comment is based on my 20 years' experience as a computer
programmer and technical writer. Among my published works are "The Linux
Network" (MIS Press, 1998), "The Linux Database" (MIS Press, 1997),
"ANSI C: A Lexical Guide" (Prentice Hall, 1988), and "The SuSE Linux
Network" (M&T Books, 2000).

-- Criteria for a Settlement --

The settlement with Microsoft must fulfill the following criteria:

1. It must, as much as possible, preserve Microsoft as a corporate entity
   and engine of commerce.

2. It must alleviate Microsoft's illegal monopolistic influence on the market
   in computer software.

3. It must be clear, verifiable, and enforceable.

The first point is obvious: while Microsoft has behaved illegally, it is
still a vital entity in the marketplace. It needs to be tamed, not destroyed.

The second point is also clear: the point of the settlement is not to punish
Microsoft, but to preserve the integrity of the market from Microsoft's
illegal monopoly. That is the goal: to preserve the market.

The third point is often overlooked: unless Microsoft's behavior can be
verified objectively, the result of any settlement will simply be another
round of lawsuits - an outcome that no sane person could wish.

-- The Proposed Settlement Fails These Criteria --

The proposed settlement fails on all three criteria.

1. The proposed board of oversight will interfere with Microsoft's internal
   operations, slowing its ability to work and complicating the already
   complex task of writing software.

2. The proposed settlement addresses some contractual issues, but does not
   address Microsoft's warping of the marketplace in technology - which is
   by far Microsoft's most damaging behavior.

3. The proposed settlement's oversight provisions are vague, and are subject
   to interpretation and dispute.

With all due respect, the proposed settlement is something only a lawyer
could love - and litigious lawyer at that.

It is possible to write a settlement that will be fair to Microsoft yet
preserve the marketplace from its predations - but only if one understands
the techical core of Microsoft's threat to the marketplace.

-- Technical Basis for Preserving the Market --

Much of the government's case against Microsoft depended upon the internals
of Microsoft's software - particularly the Windows operating system. However,
this is misleading: the most important feature of a software program is not
how it behaves internally, but how it interacts with other programs.

Computer programs exchange information through the use of *protocols*. A
protocol is simply a set of rules that define how data is interchanged.
A protocol can govern how data are written into a file, so the data can be
retrieved and processed again; or it can govern how two programs "converse"
with each other over a network.

This point is vital: ** A monopolist can extend its influence from one software
arena into another arena if and only if it controls the protocols with which the
programs in the one arena communicate with the programs in the other arena. **

The vast computer network that we call the Internet is governed by a set of
protocols that have been written by the software community at large. A mechanism
called a "request for comment" allows an individual or group to propose a protocol;
others comment, amendations are made, and votes taken before the protocol is
adopted. This openness permits a free market in software and services: all software
that adheres to the protocol can participate in the marketplace, and exchange data
with other programs by other vendors that also adhere to the protocol.

** The key to Microsoft's distortion of the marketplace is that it unilaterally
   rewrites protocols. **

Sometimes the rewriting consists of changing a protocol's rules. More often, it
involves adding extensions to the protocol. These features are not documented,
and often are patented or copyrighted. They are offered as improvements or
enhancements to the protocol; but whilethese changes may or may not improve the
protocol, but they *always* have the effect of blocking other software vendors
from participating in the software arena.

The rewriting of protocols is allowing Microsoft to extend its monopoly in
desktop operating systems and applications into the server market: its ability
to unilaterally rewrite how client and server communicate means that commercial
users will have to use Microsoft servers in order to receive business from

Microsoft clients.

This extension of influence from one arena into another is precisely the abuse that antitrust law was meant to stop - and it is precisely the abuse that the proposed settlement does *not* address.

-- A Settlement That Works --

Fortunately, the technical nature of the abuse also makes possible a technical settlement - one that fulfills all three criteria that I outlined above.

My proposed settlement has the following points:

1. Microsoft software will use *only* commonly accepted protocols for communication between clients and servers. No additions or modifications will be allowed, except where approved by the software community at large through the normal request-for-comment process.

2. Microsoft will document and submit to the request-for-comment process all of the file formats used by its applications, in particular, Microsoft Word, Microsoft Access, and Microsoft Excel. Once the submission is made, Microsoft must adhere to the file formats so documented, and can change formats only by submitting revisions to the software community at large through the normal request-for-comment process.

3. A set of computer programs will be written by a court-appointed third party. These programs will test whether Microsoft software adheres to protocols as openly documented.

4. Should the test program show that Microsoft has violated a protocol, and should the violation be verified by a third party, the court will order adherence, and prescribe appropriate penalties.

This settlement will let Microsoft carry on its work unimpeded by supervisors or court-imposed bureaucracy. It will stop Microsoft from extending its illegal monopoly into other arenas, and it will let new companies compete in the Microsoft arena. Most importantly, it is clear and objectively verifiable.

-- Conclusion --

Thank you for taking the time to read my comment. I hope that my comments will help the court to arrive at a settlement that is truly fair and truly effective.

Most importantly, I hope the court will take to heart the need for any settlement to address Microsoft's abuse of protocols. This is the heart of the problem, and any settlement that does not address it will be a failure.

=-=
    Fred Butzen   fred@lepanto.com [home]

4320 N. Claremont Avenue   fred@vailsys.com [work]
Chicago, IL 60618-1612 USA   (888) 599-8854

CC: fred@lepanto.com@inetgw,jith@stanfordalumni.org@in...